आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 – टेलेफैक्स07926305136

DIN : 20230764SW000000FD64

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/3283/2023 /3335 - 39

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-58/2023-24**
दिनाँक Date : **30-06-2023** जारी करने की तारीख Date of Issue 17.07.2023

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)

ग Arising out of OIO No. **CGST/WS07/O&A/OIO-101/AC-RAG/2022-23** दिनाँक: **30.08.2022** passed by Assistant Commissioner, CGST, Division VII, Ahmedabad South

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Endeavour Infotech Pvt Ltd
49, Someshwara Complex II,
Nr. Bidiwala Park, Satellite, Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

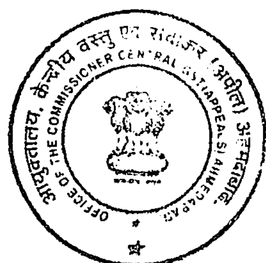
Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार मे हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटांन को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

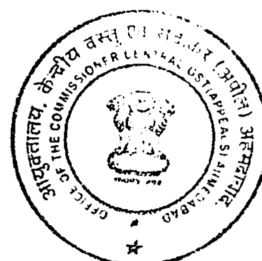
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गत:–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन , असरवा , गिरधरनागर, अहमदाबाद–380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor,Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

60ण सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

a. *(Section)* खंड 11D के तहत निर्धारित राशि;

इण लिया गलत सेनवैट क्रेडिट की राशि;

बण सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील'** दाखिल करने **के लिए पूर्व शर्त बना दिया गया है.**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

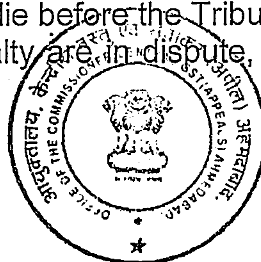
(xlvi) amount determined under Section 11 D;

(xlvii) amount of erroneous Cenvat Credit taken;

(xlviii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER IN APPEAL

M/s. Endeavour Infotech Pvt. Ltd., 49, Someshwara Complex-II, Nr. Bidiwala Park, Satellite, Ahmedabad (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST/WS07/O&A/OIO-101/AC-RAG/2022-23 dated 30.08.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VII, Ahmedabad South Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant are holding PAN No. AAACE7138E.

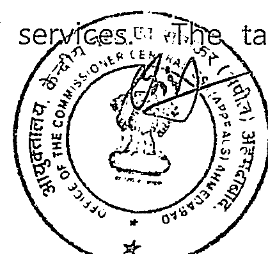
2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15 to 2016-17, it was noticed that the appellant had earned substantial income from service but were not registered with the Service Tax Department. It was noticed that in Income Tax Return/TDS filed by the appellant with the Income Tax Department, they had declared income of Rs. 21,10,481/-, Rs. 16,55,145/- and Rs. 16,43,862/- for the F.Y 2014-15, F.Y. 2015-16 & F.Y. 2016-17 respectively, from sale of service, on which no service tax was paid. Letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for said financial years. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The service tax liability of Rs. 5,33,785/- was, thereafter, quantified on the taxable income declared to the Income Tax Department.

2.1 Show Cause Notice (SCN) No. V/WS07/II/O&A/SCN-134/AAACE7138E/2020-21 dated 23.09.2020 was issued to the appellant proposing recovery of service tax amount of Rs. 5,33,785/- on the taxable income received during the F.Y. 2014-15 to 2016-17 along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 77 and Section 78 of the Finance Act, 1994 were also proposed.

3. The said SCN was adjudicated vide the impugned order, wherein the adjudicating authority observed that due to some typographical error the service tax liability for the F.Y. 2016-17 was wrongly mentioned as Rs. 24,658/- instead of Rs. 2,46,579/-. Thus, the total service tax liability was corrected to Rs. 7,55,706/-. Out of total demand of Rs. 7,55,706/- the service tax demand of Rs.5,26,436/- was confirmed alongwith interest and service tax demand of Rs. 2,29,270/- was dropped. Penalty of Rs.10,000/- under Section 77(1), penalty of Rs. 60,000/- under Section 70 and penalty of Rs. 5,26,436/- under Section 78 of the F.A., 1994 were also imposed.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal alongwith the application seeking condonation of delay, on the grounds elaborated below:-

- They claim that they have provided medical transcription services and other IT related services such as Software & Web Development during the disputed period to various service recipients located outside India. In terms of Rule 6A (1) of the Service Tax Rules, 1994, such services shall be treated as export of service and hence are not liable to pay service tax. They also provided bifurcation of services rendered i.e. export of service & domestic supply of services. The table is



reproduced below. Further, in some case, they have claimed that they have not received payment for the service which were provided outside India.

Year	Export of services	Domestic Supply of services	Total Income as per Financial Statement
2014-15	1166982	943500	2110482
2015-16	705145	950000	1655145
2016-17	958862	685000	1643862

- The SCN has been issued in a mechanical way and without application of mind as it fails to assert the classification under a particular head hence levy and collection of tax on the basis of specified taxable service have not been considered nor the criteria for basic exemption limit and payment of service tax. Reliance placed on Apex Court's decision passed in the case of Brindavan Beverages (P) Ltd- 2007 (213) ELT 48 (SC).

- Chapter V of the Finance Act, 1994 has been omitted vide Section 173 of CGST Act, 2017 and Section 174(2) of the CGST Act refers to repeal of the various Act amendments of the F.A., 1994. Thus, when the Finance Act has been completely eliminated, applying the repeal and saving provisions is impermissible and therefore the SCN is not maintainable in law.

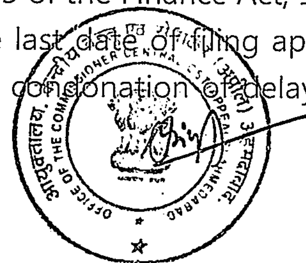
- As the domestic supply of services i.e. the taxable supply of service has not crossed the Ten Lakh threshold limit, they claim they are eligible for small scale exemption. Reliance is placed on decision passed in the case of Ashok Kumar Mishra – 2018 (082) ITPJ (S) 0193.

- All the information was provided to the department and the details of income earned during the F.Y. 2014-15, 2015-16 and 2016-17 were available to the department through ITR filed. Thus, suppression or intent to evade taxes is not established. Reliance placed on following case laws.

    - Continental Foundation Jt. Venture- 2007 (216) ELT 177 (SC)
    - Shri Sultan Promoters – 2010-TIOL-623-HC-MAD-ST
    - RAC Steels – 2010-TIOL-484-CESTAT-MAD
    - Rajarani Exports- 2010 (18) STR 777

- They have claimed cum tax benefit in terms of the provision of Section 67(2) of the F.A., 1994 by relying on the decisions passed in the case of Maruti Udyog- 2002 (141) ELT 003; Rampur Engineering.- 2006 (5) STR 386.

4.1 On going through the appeal memorandum, it is noticed that the impugned order was issued on 31.08.2022 and the same was received by the appellant on 05.09.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 30.11.2022 i.e. after a delay of 25 days from the last date of filing appeal. The appellant have filed a Miscellaneous Application seeking condonation of delay, on



the grounds that due to technical error they could not generate non-assessee registration for making payment of pre-deposit, hence there was delay in filing the appeal. As the delay is within the condonable period, they requested to condone the delay in terms of the proviso to Section 85 of the F.A., 1994.

5. Personal hearing in the matter relating to Condonation of Delay was held on 03.03.2023. Shri Sahil H. Shah, Chartered Accountant, and Shri Biren H. Shah, Chartered Accountant, appeared on behalf of the appellant. They reiterated the submissions made in the Miscellaneous Application seeking condonation of delay in filing the appeal.

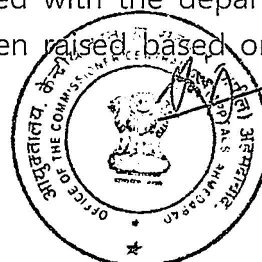
5.1 Subsequently, personal hearing was granted on 23.06.2023. Shri Sahil H. Shah, Chartered Accountant appeared on behalf of the appellant and reiterated the submissions made in the appeal memorandum. He submitted that the appellant provided export of services in a territory outside India. The services are out of purview of service tax by virtue of provisions under the charging Section 66B of the F.A. 1994. In Para 6.11 and 6.12 of the O-I-O, the adjudicating authority has held that the appellant was eligible for the benefit of export of services. However, the adjudicating authority, later in the impugned order has confirmed the part of demand in which FIRC was not submitted. He submitted that in terms of provisions under Section 66B of the F.A., 1994 the service tax can be charged only if the services are provided within India, irrespective of the receipt of FIRC. The requirement of FIRC under Rule 6A was in fact for non-reversal of CENVAT credit under CENVAT Credit Rules (CCR), 2004, where definition of exempted service has been provided. In this regard he also submitted a copy of an article in the TIOL dated 08.01.2013 by Shri Rahul Tangri relied by him. He, therefore, requested to set-aside the impugned O-I-O.

6. Before taking up the issue on merits, I will first decide the Miscellaneous Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Act, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay as genuine, I condone the delay of 25 days and take up the appeal for decision on merits.

7. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum as well as those made during personal hearing. The issue to be decided in the present case is whether the service tax demand of Rs. 5,26,436/- alongwith interest and penalties, confirmed in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise?

The demand pertains to the period F.Y. 2014-15 to F.Y. 2016-17.

7.1 It is observed that the appellant were not registered with the department and were not filing ST-3 returns. The present demand has been raised based on ITR data

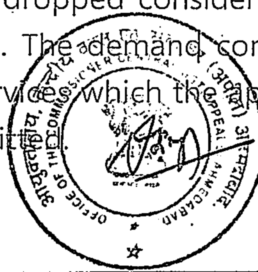


provided by Income Tax Department wherein it is alleged that the appellant had not discharged the service tax liability on the taxable income declared in their ITR.

7.2 Based on the copy of Balance Sheet, Bank Statement and Invoices submitted by the appellant, the adjudicating authority observed that the appellant during the disputed period were engaged in providing Medical Transcription, Call Centre Services, Information & Technology related services such as Software & Website Development and Server Maintenance Services domestically as well as under export. However, on comparing the reconciliation statement dated 31.08.2022, submitted by the appellant, the adjudicating authority observed that the appellant had provided incorrect information about the export and domestic supply of service. Variation was noticed in the figures mentioned in the written submission dated 31.03.2022 viz-a-viz the figures mentioned in reconciliation statement dated 31.08.2022. The table reflecting the differential figures as mentioned in the impugned order is reproduced below;

	Data as per written submission dtd 31.03.2022		**Data as per reconciliation statement dated 31.08.2022**			
F.Y.	*Export of Service*	*Domestic Service*	*Export of Service*	*Domestic Service*	*Difference in export of service*	*Total Taxable service excluding exports*
(1)	(2)	(3)	(4)	(5)	(6) (2-4)	(7) (5+6)
2014-15	1166982	943499	602383	943499	564599	1508098
2015-16	705145	950000	199710	950000	505435	1455435
2016-17	958862	685000	783888	685000	174974	859974
Total	**2830989**	**1723499**	**1585981**	**2578499**	**1245008**	**3823507**

7.3 The adjudicating authority therefore called upon the appellant to submit the copy of invoices in respect of the export of services and the invoices pertaining to domestic supply of services. The appellant provided the specimen copies of the invoices. The adjudicating authority observed that there was difference in values submitted as export of services in both their submissions. Where ever the appellant submitted the proof of remittance received in foreign currency, the adjudicating authority held such services as 'Export of Services' in terms of Rule 6A of the Service Tax Rules, 1994 holding them as rendered outside India. For the services (other than domestic services), the adjudicating authority held that it was not possible to co-relate the entries reflected in the bank statements with that of the invoices. As the reconciliation statement showing the amount of invoices vis-à-vis the remittance received and reflected in the bank account was not provided by the appellant, he therefore denied the benefit of export of service as claimed by the appellant in respect services for which FIRC was not submitted. Thus, considering the value of Rs. 25,78,799/- as domestic supply of service as claimed by the appellant and Rs. 12,45,008/- as difference in export noticed for which FIRC was not submitted, the adjudicating authority arrived at total taxable value of Rs. 38,23,507/- on which service tax demand of Rs. 5,26,436/- was confirmed. For the services where FIRC was submitted, the service tax demand of Rs. 2,29,270/- was dropped considering the same as export of service as foreign remittance was received. The demand confirmed therefore included domestic supply as well as the supply of services which the appellant claimed was exported but for which no proof of FIRC was submitted.



7.4 The appellant in the appeal memorandum have given the bifurcation of export of service and domestic supply of services and have claimed that these figures are also reflected in their Audit Reports. They claimed that in some services which were rendered outside the taxable territory, they have not received the payments but enclosed a copy of debtor's ledgers as proof that the services were exported. They however claim that though in some cases foreign exchange has not been realized but since the services were provided outside India territory the same should be considered as export of service as such transactions are exempted from service tax levy. The details provided by the appellant are re-produced below for ready reference.

F.Y.	*Export of Service*	*Domestic Service*	*Total income (Sale of service) as per Audit Reports & as per ITR*	*Outstanding debtor as per Audit Report*
(1)	(2)	(3)	(4)	(5)
2014-15	1166982	943500	2110482	2410099
2015-16	705145	950000	1655145	2044933
2016-17	958862	685000	1643862	2218721
Total	**2830989**	**2578500**	**5409489**	**6673753**

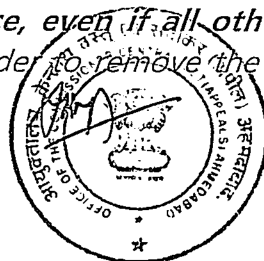
7.5 From the facts of the case, it is clear that the appellant are not disputing the value of domestic supply of service arrived by the adjudicating authority which comes to Rs.25,78,500/-. They are only disputing that the value of Rs. 28,30,989/- which they claim should be treated as export of service as these services were rendered outside the taxable territory.

7.6 It is observed that for qualifying an activity as export of service in terms of Rule 6A (1) of the Service Tax Rules, 1994, all the following conditions are required to be satisfied, namely;

(a) *The provider of service is located in the taxable territory,*
(b) *The recipient of service is located outside India,*
(c) *The service is not a service specified in Section 66D of the Act,*
(d) *The place of provision of the service is outside India,*
(e) ***The payment for such service has been received by the provider of service in convertible foreign exchange, and***
(f) *The provider of service and the recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 to Clause (44) of Section 65B of the Act.*

7.7 It is admitted by the appellant that in some cases they have not received the payment in convertible foreign exchange and have shown the same as receivables in the financial records. Further, the CBIC vide Instruction No. 341/34/2010-TRU, dated 31-3-2011 had given following clarification;

"9. Export of services is exempt subject, inter alia, to the condition that the payment should be received in convertible foreign exchange. ***Until the payment is received, the provision of service, even if all other conditions are met, would not constitute export.*** *In order to remove the hardship that*



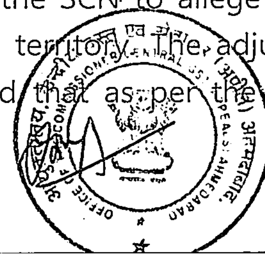
will be caused due to accrual method, the point of taxation has been changed to the date of payment. However, if the payment is not received within the period prescribed by RBI, the point of taxation shall be determined in the absence of this rule."

7.8 So, in terms of above provisions, any service provided or agreed to be provided shall be treated as export of service when the conditions laid down under Rule 6A (1) are fulfilled. The appellant have contended that the services were exported though payments were not received. They before the adjudicating authority submitted the copy of invoices to substantiate their above claim but as the remittance for such services were not received the same were shown as receivables by the appellant in their financial records. The adjudicating authority however held such services as taxable services as the conditions laid down under Rule 6A (1) were not fully fulfilled. I find that in the SCN, no ground is made out to deny the benefit of export of services to the appellant. Even if the remittance was not received within the prescribed time, it cannot be held that the service rendered was within the taxable territories when the invoices, Balance Sheets establish otherwise. The adjudicating authority never challenged the invoices or figures reflected in the Audited balance sheet to counter the argument made by the appellant. Thus, I find that merely because the appellant could not produce the documents evidencing the receipt of foreign remittance, the service cannot be held as having rendered in India.

8. Further, the appellant have vigorously contested that in terms of Section 66B of the Finance Act, service tax cannot be charged on the services which were rendered outside the taxable territory. I find that significant changes were introduced in Chapter V of the F.A, 1994 with effect from 1st July, 2012 by the Finance Act, 2012. Section 65 was omitted and substituted by Section 65B titled *'Interpretations'*. Section 65B (51) of the F.A defined the expression *'taxable service'* to mean any service on which Service Tax is leviable under Section 66B. Section 66B is the charging provision which was inserted by the F.A, 2012 with effect from 1st July, 2012, which provided that there shall be levied a tax at the rate of twelve per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be **provided in the taxable territory** by one person to another and collected in such manner as may be prescribed.

8.1 Plain reading of Section 66B of the FA, brings out that the Service Tax is leviable on the value of all services other than those services specified in the negative list; such service should be provided or agreed to be provided by one person to another and collected in such manner as may be prescribed and such service should be provided or agreed to be provided in the "taxable territory". The expression 'taxable territory' has been defined under Section 65B (52) to mean "the territory to which the provisions of this Chapter apply". Further, Section 64 (1) of the F.A states that Chapter V "extends to the whole of India except the State of Jammu and Kashmir". Thus, a collective reading of Section 66B read with Section 64 (1) and Section 65B(52) makes it plain that Service Tax is leviable only on services provided or agreed to be provided in the 'taxable territory' i.e. the whole of India except Jammu and Kashmir.

8.2 In the instant case, no grounds have been made in the SCN to allege that the services rendered by the appellant were within the taxable territory. The adjudicating authority at Para-6.11 of the impugned order has recorded that as per the Place of



Provision of Service (POPS) Rules, 2012 the place of provision of a service shall be the location of the service recipient. Rule 3 of POPS Rules 2012, is reproduced below:-

> ***RULE 3. Place of provision generally.*** *— The place of provision of a service shall be the location of the recipient of service:*
>
> ***Provided*** *that in case [of services other than online information and database access or retrieval services, where] the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.*

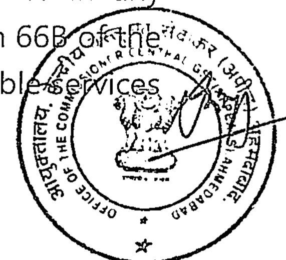
In the instant case the recipient of service is located outside the taxable territory, which was never disputed by the department. Therefore, the place of provision of service in such case shall be a outside the taxable territory where levy of service tax shall not attract. As services rendered outside the taxable territory of India would not be a 'taxable service' in terms of Section 65(B) of the F.A, provisions of Chapter-V of the Finance Act shall not apply. I therefore find that the demand on the taxable value of Rs. 28,30.989/- holding the same as taxable service shall not sustain in light of my above findings.

9. As regards the demand on the taxable value of Rs.17,23,499/- in respect of the domestic supply of service is concerned, I find that the same is sustainable and the same is also not disputed by the appellant. The appellant have accepted that the said taxable value pertains to their domestic supply of services. They however have claimed cum tax benefit. It is observed that Hon'ble Tribunal in the case of ***Commissioner v. Advantage Media Consultant [2008 (10) S.T.R. 449 (Tri.-Kol.)]*** has held that Service tax being an indirect tax, was borne by consumer of goods/services and the same was collected by assessee and remitted to government and total receipts for rendering services should be treated as inclusive of Service tax due to be paid by ultimate customer unless Service tax was paid separately by customer. This decision has been maintained by the Apex Court as reported in **2009 (14) S.T.R. J49 (S.C.).** There are endless quasi judicial and judicial decisions on this issue and hence, I find that this benefit is required to be extended to the appellant and accordingly the tax liability shall be as per the table below:

Tax after granting Cum Tax Benefit

F.Y.	*Domestic Service (Gross Value)*	Service tax rate	Taxable Value (Gross Value*100/112.36% ; 114.5% ;115%)	S.Tax Payable
1	2		3	4
2014-15	943499	12.36%	839711	103788
2015-16	950000	14.5%	829694	120306
2016-17	685000	15%	595652	89348
	2578499			313442

10. As regards, the Small Service Providers benefit claimed by the appellant under Notification No. 33/2012-ST dated 20.06.2012, it is observed that the said notification exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act. The "*aggregate value*" means the sum total of value of taxable services



charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification. On going through the Balance Sheet of the F.Y. 2013-14, F.Y. 2014-15, F.Y. 2015-16 and F.Y. 2016-17, I find that the income earned from the taxable services is less than the threshold limit of Rs.10 lacs. Hence, I find that the benefit of small scale service provider benefit can be extended to the appellant for the F.Y. 2014-15, F.Y. 2015-16 & F.Y. 2016-17 as the income from domestic sale is less than the threshold limit.

F.Y.	Sale of services	Domestic Sale	Export Sale
2013-14	4587979	701850	3886129
2014-15	2110482	943500	1166982
2015-16	1655145	950000	705145
2016-17	1643862	685000	958862

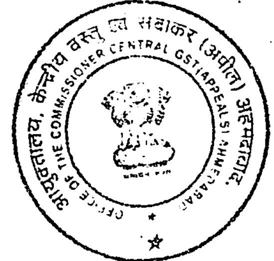
11. Accordingly, I find that after granting the threshold limit exemption to the appellant, the demand of Rs. 3,13,442/- on the domestic supply of services as discussed in para-9 supra shall also not sustain. When the demand does not sustain there is no question of recovering the interest and imposing penalties thereon.

12. In light of above discussion, I set-aside the impugned order and allow the appeal filed by the appellant.

13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.

20-6-23
(शिव प्रताप सिंह)
आयुक्त (अपील्स)

Date: 30.06.2023



Attested

(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Endeavour Infotech Pvt. Ltd., - **Appellant**
49, Someshwara Complex-II,
Nr. Bidiwala Park, Satellite,
Ahmedabad

The Assistant Commissioner - **Respondent**
CGST, Division-VII,
Ahmedabad South

Copy to:

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2. The Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad South. (For uploading the OIA)
4. Guard File.